



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

Acting Secretary of Labor Edward Hugler
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

April 17, 2017

Re: Fiduciary Rule Examination
RIN 1210-AB79

Dear Acting Secretary Hugler:

The Office of the Attorney General of the State of New York is charged with protecting investors by enforcing New York's securities fraud statute, General Business Law Article 23-A, more commonly known as the Martin Act. For nearly 100 years, since the enactment of the Martin Act in 1921, state and federal securities laws and regulations have worked together to provide important protections to investors in New York. As the chief New York State law enforcement official responsible for protecting investors, I strongly oppose any further delay or weakening of the Department of Labor's (DOL) "Fiduciary Rule," which would require financial advisers to act in their clients' best interest instead of their own.

A recent survey of New Yorkers age 35 to 69 revealed that their top financial concerns were planning and saving for retirement.¹ They have good reason to be worried. Whereas their parents and grandparents often had access to generous defined benefit pensions that, when coupled with Social Security and Medicare, would amply provide for their needs throughout their golden years, just 18% of private sector workers today have access to a defined benefit retirement plan.² In New York, 54% of private sector workers are not even offered a retirement savings plan of any kind by their employer.³ The emergence of Social Security and defined benefit pension plans helped save American workers from the depths and despair of poverty in retirement that plagued generations of seniors. With the near disappearance of pension plans, scant alternatives for a majority of workers, and the promise of the social safety net in question, the need for reliable unconflicted retirement investment advice is even more critical.

¹ http://www.aarp.org/content/dam/aarp/research/surveys_statistics/general/2015/2015-NY-Survey-GenX-Boomer-Voters-res-gen.pdf

² <https://www.bls.gov/ncs/ebs/benefits/2016/ownership/private/table02a.htm>

³ <http://www.aarp.org/politics-society/advocacy/financial-security/info-2014/americans-without-retirement-plan.html>

To save for their retirement, more and more of today's workers turn to investment accounts that would be covered by the Fiduciary Rule, like 401(k)s and IRAs. Indeed, IRAs "represent the single largest repository of U.S. retirement plan assets, holding more than one-quarter of all retirement plan assets in the nation."⁴ Yet, whatever the type of investment account, choosing it is just one part of retirement planning. Most crucial is determining how much to save, over what period of time, and where to invest the savings in order to ensure a comfortable retirement. There's nothing more worrisome to a retiree than the fear of outliving one's nest egg.

To help make these difficult investment decisions, a worker saving for retirement must often rely on a financial advisor. However, under current federal law, that advisor may put his or her own interests above the interests of the client. Financial advisors may steer their clients to investments that provide the advisor with lucrative commissions or other compensation arrangements. Many clients are not even aware that the financial advisor they entrust with their retirement savings is not required to act in their best interests. My office investigates and prosecutes frauds perpetrated by financial advisors, but the Fiduciary Rule is designed to address the unfortunate current regulatory reality that allows financial advisors to line their own pockets with their clients' savings.

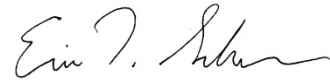
The Fiduciary Rule was designed to end conflicted advice by requiring retirement financial advisors to act in their clients' best interests, not their own, and to ensure that conflicts of interest are disclosed to the client. The Regulatory Impact Assessment accompanying the final rule meticulously documented the pervasive conflicts of interest in the retirement advisory business and the consequent harm conflicts cause to investors, finding that conflicted advice in the mutual fund segment alone could cost IRA investors between \$95 billion and \$189 billion over the next ten years. A worker whose retirement savings is held in a retirement plan governed by ERISA (such as a 401(k)), who then rolls her retirement savings into an IRA, could lose up to 23% of the value of her savings over 30 years of retirement due to conflicted advice.

Any delay in implementing the Fiduciary Rule is both costly and unnecessary. DOL itself has noted that investors could lose \$147 million this year and \$890 million over ten years because of the proposed 60-day delay. Further, the rule was subject to an exhaustive rulemaking process spanning six years and incorporating broad academic and market research, economic analysis, and public comment. The final rule followed multiple proposals and consideration of the extensive public record and was carefully crafted to protect investors without placing undue burdens on the financial services industry.

The need for the Fiduciary Rule is clear: a worker's interest in his or her own retirement savings must come first. That is a policy that all who are entrusted with the retirement savings of millions of workers should support. Retirement investors in New York and across the country simply do not deserve to have their savings in peril any longer. Any reasonable re-evaluation of the rule cannot conclude otherwise. I urge DOL to implement the full rule without further delay.

⁴ https://www.ebri.org/pdf/briefspdf/EBRI_IB_429_IRA-Long.17Jan17.pdf

Respectfully,

A handwritten signature in black ink, appearing to read "Eric T. Schneiderman". The signature is fluid and cursive, with a prominent initial "E" and a long, sweeping underline.

Eric T. Schneiderman